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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FRANK ELI HEARD,

Petitioner,

v.

F GONZALEZ, et al., Warden

Respondent.

Civil No. 09-cv-2117-POR

**ORDER DENYING SECOND  
AMENDED PETITION FOR WRIT OF  
HABEAS CORPUS**

**[ECF No. 31]**

**I. INTRODUCTION**

On September 25, 2009, Petitioner Frank Eli Heard (“Petitioner”), a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1). On October 20, 2009, this Court dismissed the case without prejudice because Petitioner failed to name a proper Respondent. (ECF No. 3). On November 20, 2009, Petitioner filed a First Amended Petition. (ECF No. 7). On January 11, 2010, Petitioner consented to the exercise of jurisdiction over the matter by United States Magistrate Judge Louisa S Porter. (ECF No. 13). On January 21, 2010, Defendant filed an Answer to Petitioner’s First Amended Petition. (ECF No. 14). On November 24, 2010, this Court granted Petitioner leave to file a Second Amended Petition (ECF No. 33). The Court has construed Respondent’s Answer to Petitioner’s First Amended Petition as their Answer to Petitioner’s Second Amended Petition.<sup>1</sup> On January 18, 2011, Petitioner filed a Traverse to his Second Amended Petition. (ECF No. 39).

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<sup>1</sup>The Court shall address this decision in more detail in its discussion of the procedural background.

1 This Court has reviewed the Petition (ECF No. 1), Respondent's Answer (ECF No. 14),  
2 Petitioner's Traverse (ECF No. 39), and all supporting documents. After a thorough review, this  
3 Court finds Petitioner is not entitled to the relief requested and RECOMMENDS the Petition be  
4 **DENIED.**

## II. PROCEDURAL BACKGROUND

6 Petitioner was convicted of two counts each of committing attempted willful, deliberate, and  
7 premeditated murder pursuant to California Penal Code §§ 664, 187. (Lodgment 1 at 1-2). On  
8 January 18, 2008, he was sentenced to a term of 23 years plus 80 years to life.<sup>2</sup> *Id* at 2.

9 Petitioner filed an appeal to the California Court of Appeal, Fourth Appellate District,  
10 Division One. (Lodgement 1). On February 24, 2009 the Court of Appeal affirmed the judgment.  
11 *Id.*

12 Petitioner filed a petition for review in the California Supreme Court. (Lodgment 2). On  
13 May 20, 2009, the petition for review was denied. (Lodgment 3).

14 On September 25, 2009, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28  
15 U.S.C. § 2254. (ECF No. 1). On October 20, 2009, this Court dismissed the case without prejudice  
16 because Petitioner failed to name a proper Respondent. (ECF No. 3). On November 20, 2009,  
17 Petitioner filed a First Amended Petition. (ECF No. 7). On January 11, 2010, Petitioner consented  
18 to the exercise of jurisdiction over the matter by United States Magistrate Judge Louisa S Porter.  
19 (ECF No. 13). On January 21, 2010, Defendant filed an Answer to Petitioner's First Amended  
20 Petition. (ECF No. 14). On November 24, 2010, this Court granted Petitioner leave to file a Second  
21 Amended Petition (ECF No. 33), and since the sole claim presented in Petitioner's proposed Second  
22 Amended Petition (that of denial of a fair trial for failure to admit hearsay statements) is the same  
23 claim presented in his First Amended Petition, and Respondent addressed this claim in his Answer to  
24 Petitioner's First Amended Petition, the Court shall construe Respondent's Answer to Petitioner's  
25 First Amended Petition as their Answer to Petitioner's Second Amended Petition. On January 18,  
26 2011, Petitioner filed a Traverse to his Second Amended Petition. (ECF No. 39).

<sup>28</sup> <sup>2</sup>The sentence reflects Plaintiff's plea of guilty to voluntary manslaughter, a count arising from a different incident that was initially to be tried with the attempted murder counts, but was later severed. See ECF No. 1 at 2.

### III. STATEMENT OF FACTS

2 The following facts are taken from the California Court of Appeal opinion in *People v.*  
3 *Heard*, No. SCD193832 (Cal. Ct. App. Feb 24, 2009). (Lodgment 1). The Court presumes these  
4 factual determinations are correct pursuant to 28 U.S.C.A. § 2254(e)(1). The court stated:

Heard, codefendant Mills, Ricky Pangelinan, Michael White, Roosevelt White, and Bobby Jones are members of the West Coast Crips gang. The West Coast Crips gang territory includes the Logan Heights area. Michael and Roosevelt White lived in an apartment complex on K street in this area that was a frequent gang hangout.

8 On January 3, 2005, Jessica Godinez borrowed a white Mitsubishi  
9 Galant and drove to Michael White's apartment at around 7:00 p.m. After  
10 she arrived, she gave him a ride to cash a check. Godinez told the police that  
Heard came along, and on their way back they picked up Mills on L Street.  
Godinez said that later that evening, Heard, Mills, and possibly Michael  
White borrowed the Mitsubishi from Godinez and were gone for about 30 to  
60 minutes.

11 At about 8:15 p.m. that same evening, San Diego Police Detective  
12 Steven Hobbs and Officer Richard McCoy were conducting a traffic stop in  
13 West Coast Crips territory. They observed a four-door Mitsubishi Galant  
14 containing four African-American males wearing dark-colored clothing  
15 commonly worn by West Coast Crip members. As the Mitsubishi  
approached Detective Hobbs and Officer McCoy, the occupants first looked  
away with a “deer in the headlights” expression. Detective Hobbs  
recognized Mills in the front passenger seat based on a traffic stop involving  
some West Coast Crips in the same car a month earlier.

Shakyla Bell testified that on the evening of January 3, she and some friends were walking to a market on 47th Street when a white four-door vehicle drove by them and someone inside the vehicle said, "What's crackin, cuz?" Bell recognized this as a gang statement commonly used by Crips, but not by the Bloods from her neighborhood. Bell's group ignored the comment, walked into the store, and then walked back to where they were hanging out at a house on "T" Street. The group included Bell, Simon Judge, Terrance Hillman, James Compare, and others.

20 The white Mitsubishi drove past the "T" Street house. The front  
21 passenger, a Black male with a bald head, made eye contact with Compare  
22 and then quickly leaned back in the seat. The Mitsubishi sped off, and then  
quickly turned around and passed by a second time. This time, the front  
passenger, who was wearing a dark-colored hooded sweatshirt and had braids  
in his hair fired 6 to 10 gunshots toward the group. Hillman was struck once  
in the leg, and Judge was struck in the head and hip.

At the White residence, Michael White retrieved a box of ammunition from underneath his bed and placed it between Heard and Mills. Heard and Mills then removed guns from their persons and reloaded them. Mills had a chrome .22-caliber gun with a pearl handle. Heard had a larger, black revolver. After they reloaded the guns, Heard and Mills traded guns and

1 each placed his gun between his waist and pants.

2 Meanwhile, Detective Hobbs had responded to the scene of the  
 3 shooting on "T" Street and observed .22-caliber shell casings in the front  
 4 yard of the house. Witness descriptions of the vehicle involved in the  
 5 shooting matched the description of the Mitsubishi parked on the street in  
 6 front of the White residence, which was a known West Coast Crips hangout,  
 7 and the police maintained surveillance of the vehicle.

8 Later that night, Mills, Pangelinan and Godinez walked outside the  
 9 White residence in order to drive to a drug house. The walked to the  
 10 Mitsubishi, checked the interior for gun shells, and drove away. Detective  
 11 Hobbs quickly pulled the Mitsubishi over. While illuminating the car with  
 12 his spotlights, Detective Hobbs observed Mills nervously looking over his  
 13 shoulder, appearing to be yelling at Godinez, who was driving.

14 Mills ordered Godinez to flee from the police. As Detective Hobbs  
 15 walked toward the Mitsubishi, it suddenly sped off and Detective Hobbs and  
 16 other officers gave chase. At one point during the chase, Mills removed a  
 17 gun from his pants and threw it out of the window. The chase continued  
 18 down Highway 94, and eventually came to an end after Mills told Godinez  
 19 to pull over.

20 Later that night, a .22-caliber semiautomatic handgun was found in  
 21 the area where Mills threw the gun out of the window. Three of the bullets  
 22 in the gun were stamped with "REM" which matched the shell casings found  
 23 at the scene of the shooting. It was subsequently determined that the .22-  
 24 caliber shell casings found at the scene of the shooting were fired from the  
 25 recovered gun. Gunshot residue was found on Mill's right hand.

26 Detective Carter later interviewed Bell, showed her a six-pack  
 27 photographic lineup containing Heard's picture, and asked about the person  
 28 who said, "What's crackin' cuz?" Bell said Heard's picture "looked like him  
 from afar."

29 On January 24 the police brought Heard in for questioning. Heard  
 30 initially denied he had been in possession of a gun earlier that evening, but  
 31 later said he had possessed a gun and discarded it in some bushes. The police  
 32 drove Heard to the area but were unable to locate the gun. When the police  
 33 again asked Heard about the location of the gun, he told them he hid it in the  
 34 first police car into which he had been placed that evening. After searching  
 35 the car, the police located a .25-caliber chrome pistol with a pearl handle  
 36 wedged in the back seats. The .25-caliber shell casings found at the scene of  
 37 the "T" Street shooting were later determined to have been fired from that  
 38 gun. Heard's fingerprint was found on this gun.

39 A videotape of a 2005 New Year's party was found inside the  
 40 Mitsubishi. The tape was made on either December 31, 2004, or January 1,  
 41 2005. At one point, Heard was shown holding a .25-caliber gun that  
 42 appeared to be the same gun recovered from the police car on January 24.  
 43 At another point, Heard is shown rapping about the Crips gang and glorifying  
 44 a prior killing of some "slob nigga" Bloods.

45 The police interviewed Pangelinan several times after his arrest.  
 46 Pangelinan told the police he was at the White residence on the night of the  
 47 shooting and saw Heard, Mills, the Whites, and Godinez in the bedroom,  
 48 where Heard told him, "We busted on some slob niggas."

49 Heard testified he was a member of the West Coast Crips, and the  
 50 language used in the New Year's Eve party video was common to rap music.  
 51 Heard possessed a .22-caliber handgun that evening, and it was shown in the  
 52 video. When he was not in possession of the handgun, he stored it in a  
 53 "stash" spot where it was accessible to other members of his gang. The gun  
 54 that he possessed and the police found on January 24, was a different, .25  
 55 caliber gun.

1 Heard testified he was not involved in the January 3 shooting. He  
 2 was not in the white Mitsubishi that evening, and he did not shoot anyone.  
 3 On that date, he was not in possession of the gun the police found of January  
 4 24. He first came into possession of that gun a few days before January 24.

#### 4 **IV. STANDARD OF REVIEW**

5 This Petition is governed by the provisions of the Antiterrorism and Effective Death Penalty  
 6 Act of 1996 (“AEDPA”). *See Lindh v. Murphy*, 521 U.S. 320 (1997). Under AEDPA, a habeas  
 7 petition will not be granted with respect to any claim adjudicated on the merits by the state court  
 8 unless that adjudication: (1) resulted in a decision that was contrary to, or involved an unreasonable  
 9 application of clearly established federal law; or (2) resulted in a decision that was based on an  
 10 unreasonable determination of the facts in light of the evidence presented at the state court  
 11 proceeding. 28 U.S.C. § 2254(d); *Early v. Packer*, 537 U.S. 3, 8 (2002). In deciding a state  
 12 prisoner’s habeas petition, a federal court is not called upon to decide whether it agrees with the  
 13 state court’s determination; rather, the court applies an extraordinarily deferential review, inquiring  
 14 only whether the state court’s decision was objectively unreasonable. *Yarborough v. Gentry*, 540  
 15 U.S. 1, 4 (2003); *Medina v. Hornung*, 386 F.3d 872, 877 (9th Cir. 2004). Additionally, the state  
 16 court’s factual determinations are presumed correct, and Petitioner carries the burden of rebutting  
 17 this presumption with “clear and convincing evidence.” 28 U.S.C.A. § 2254(e)(1) (West 2006).

18 A federal habeas court may grant relief under the “contrary to” clause if the state court  
 19 applied a rule different from the governing law set forth in Supreme Court cases, or if it decided a  
 20 case differently than the Supreme Court on a set of materially indistinguishable facts. *Bell v. Cone*,  
 21 535 U.S. 685, 694 (2002). The court may grant relief under the “unreasonable application” clause if  
 22 the state court correctly identified the governing legal principle from Supreme Court decisions but  
 23 unreasonably applied those decisions to the facts of a particular case. *Id.* Additionally, the  
 24 “unreasonable application” clause requires that the state court decision be more than incorrect or  
 25 erroneous; to warrant habeas relief, the state court’s application of clearly established federal law  
 26 must be “objectively unreasonable.” *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003).

27 Where there is no reasoned decision from the state’s highest court, the Court “looks through”  
 28 to the underlying appellate court decision. *Ylst v. Nunnemaker*, 501 U.S. 797, 801-06 (1991). If the  
 dispositive state court order does not “furnish a basis for its reasoning,” federal habeas courts must

1 conduct an independent review of the record to determine whether the state court's decision is  
 2 contrary to, or an unreasonable application of, clearly established Supreme Court law. *See Delgado*  
 3 *v. Lewis*, 223 F.3d 976, 982 (9th Cir. 2000) (overruled on other grounds by *Andrade*, 538 U.S. at 75-  
 4 76); *accord Himes v. Thompson*, 336 F.3d 848, 853 (9th Cir. 2003). However, a state court need not  
 5 cite Supreme Court precedent when resolving a habeas corpus claim. *Early*, 537 U.S. at 8. “[S]o  
 6 long as neither the reasoning nor the result of the state-court decision contradicts [Supreme Court  
 7 precedent,]” *Id.*, the state court decision will not be “contrary to” clearly established federal law. *Id.*  
 8 Clearly established federal law, for purposes of § 2254(d), means “the governing principle or  
 9 principles set forth by the Supreme Court at the time the state court renders its decision.” *Andrade*,  
 10 538 U.S. at 72.

11 Where a petitioner alleges a state court decision is based upon an unreasonable determination  
 12 of the facts in light of the evidence presented in state court, he or she must demonstrate that the  
 13 factual findings upon which the state court's adjudication rests is objectively unreasonable. *Miller-*  
 14 *El v. Cockrell*, 537 U.S. 322, 340 (2003).

## 15 V.DISCUSSION

16 The instant petition raises one ground for relief. Petitioner contends the trial court denied  
 17 Petitioner his constitutional right to present a complete defense by precluding hearsay statements  
 18 Petitioner's co-defendant Wade Mills made before trial. (Pet. at 6-7). Petitioner contends the  
 19 statements should have been deemed admissible hearsay under California Evidence Code § 1220,  
 20 the party admissions provision. (*Id.* at 6). Petitioner contends his right to due process under the  
 21 Fourteenth Amendment, and his right to present a complete defense under the Sixth Amendment  
 22 were violated because the statements were withheld. (*Id.* at 8.) In his direct appeal to the California  
 23 Court of Appeal, Petitioner raised the same claim, which was rejected on the merits. (Lodgment No.  
 24 1 at 9-12). Petitioner filed a petition for review with the Supreme Court of California, but it was  
 25 denied without comment on May 20, 2009. (Lodgment No. 3).

26 Respondent contends Petitioner is precluded from raising this claim here under section  
 27 2254(s) of Title 28 of the United States Code. (ECF No. 14-1 at 7.) Respondent alleges the state  
 28 courts' denials on the merits are consistent with, and do not involve an unreasonable application of,

1 federal law as determined by the United States Supreme Court. (*Id.*) Respondent further contends  
 2 the state court's rulings were not based on an unreasonable determination of the facts. (*Id.*)

3       a.     *Factual Background*

4       Petitioner's co-defendant Wade Mills, also a member of the West Coast Crips, was arrested  
 5 the morning following the January 3 shooting, and gave a statement to police that morning and also  
 6 on November 22, 2006. (Lodgment 1 at 8-9). During the interviews, Mills refused to identify  
 7 anyone who was in the vehicle with him at the time of the shooting, and claimed he had not seen  
 8 Petitioner since over a week prior to the shooting. (*Id.* at 9.) Petitioner testified at trial that he was  
 9 not present at the scene of the crime, but Mills did not testify at trial. (*Id.* at 8.) The trial court found  
 10 that Mills's pretrial statements did not "rise to the dignity of an admission," and there were "no  
 11 realistic indicia of trustworthiness." (Lodgment 1 at 9.)

12       b.     *The Law*

13       To present a cognizable federal habeas corpus claim, a state prisoner must allege a violation  
 14 of federal laws or the Constitution. See 28 U.S.C. § 2254(a); *Estelle v. McGuire*, 502 U.S. 62, 67-68  
 15 (1991). Habeas relief is not available for an alleged error in the interpretation or application of state  
 16 law. *Jackson*, 921 F.2d at 885; *McCotter*, 786 F.2d at 700. Federal courts may grant habeas relief  
 17 only to correct errors of federal constitutional magnitude. *Oxborrow*, 877 F.2d at 1400.

18       Specifically with regard to evidentiary rulings, "a state court's procedural or evidentiary  
 19 ruling is not subject to federal habeas review unless the ruling violates federal law, either by  
 20 infringing upon a specific federal constitutional or statutory provision or by depriving the defendant  
 21 of the fundamentally fair trial guaranteed by due process." *Walters v. Maas*, 45 F.3d 1355, 1357  
 22 (9th Cir. 1995). Therefore, a federal court may not disturb on due process grounds a state court's  
 23 decision to exclude hearsay evidence unless denial of that evidence "was arbitrary or so prejudicial  
 24 that it rendered the trial fundamentally unfair." *Walters*, 45 F.3d at 1357; *Jammal v. Van DeKamp*,  
 25 926 F.2d 918, 919 (9th Cir. 1991).

26       It is incontrovertible that the Constitution ensures criminal defendants have a right to "a  
 27 meaningful opportunity to present a complete defense." *Crane v. Kentucky* 476 U.S. 683, 690  
 28 (1986). And the Sixth Amendment is one of the primary safeguards of the right to present a

1 complete defense. *See Strickland v. Washington*, 466 U.S. 668, 684-5 (1984) (“ The Constitution  
 2 guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair  
 3 trial largely through the several provisions of the Sixth Amendment”). The right to present a  
 4 complete defense necessarily includes a right to present evidence in support of one’s defense, but  
 5 this right is not absolute. *See Taylor v. Illinois*, 484 U.S. 400, 410 (1988); *Rock v. Arkansas*, 483  
 6 U.S. 44, 55 (1987); *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973). And, “[a]s a result, state  
 7 and federal rulemakers have broad latitude under the Constitution to establish rules excluding  
 8 evidence from criminal trials.” *U.S. v. Scheffer*, 523 U.S. 303, 308 (1998). The Supreme Court has  
 9 held that excluding evidence does not offend a criminal defendant’s right to present a complete  
 10 defense unless evidence bearing assurances of trustworthiness is excluded or restrictions on  
 11 presenting evidence are arbitrarily applied. *See Washington v. Texas*, 388 U.S. 14, 23 (1967) ;  
 12 *Chambers*, 410 U.S. at 302; *Rock*, 483 U.S. at 55-56.

13       c.     *Appellate Court’s Decision*

14       In the last reasoned state court decision, the Court of Appeal held the trial court properly  
 15 excluded Petitioner’s co-defendant’s pretrial statements. (Lodgment 1 at 12). The Court of Appeal  
 16 determined because Petitioner was seeking to admit the evidence for the purpose of exculpating  
 17 himself, rather than inculpating Mills, the declarant, Evidence Code § 1220 and case law do not  
 18 support a hearsay exception to the statements. Specifically, the Court of Appeal held:

19            [Petitioner] asserts the court committed state law error by refusing to allow him to  
 20 present Mills’s interview statements in order to both exculpate himself and inculpate Mills.  
 21 He also asserts the court’s refusal to admit Mills’s statements was a federal constitutional  
 22 violation as it amounted to a denial of his constitutional rights under the Fifth, Sixth and  
 23 Fourteenth Amendments to the United States Constitution to present witnesses on his behalf  
 24 and to present a complete defense to the charges against him. These assertions are unavailing.

25       The court did not err in excluding the hearsay evidence of Mills’s extrajudicial  
 26 statements because [Petitioner] did not offer that evidence *against* Mills, the declarant, as  
 27 Evidence Code section 1220 and relevant case authorities require. As already discussed,  
 28 evidence of the statement of a party, in order to be admissible under the hearsay exception set  
 29 forth in Evidence Code section 1220, must be offered *against* the declarant party. (Evid.  
 30 Code, § 1220; *People v. Horning*, *supra*, 34 Cal.4th at p. 898; *People v. Carpenter*, *supra*, 21  
 31 Cal.4th at p.1049; *Castille*, *supra*, 129 Cal.App.4th at p. 876.)

32       Here, the primary thrust of [Petitioner’s] argument to the court, which he made in his  
 33 motion in limine for leave to present evidence of Mills’s statements, was that the statements  
 34 “provide[d] *exculpatory* evidence that [could] be used in [Petitioner’s] defense” (italics  
 35 added) and that the statements “should be placed before the trier of fact for evaluation in order  
 36 to uphold [his] Fourteenth Amendment right to Due Process.” [Petitioner] also argued that if

1 the court excluded the evidence of Mills's statements, he "would be denied fundamental Due  
 2 Process rights by discarding reliable, *exculpatory* evidence with a high probative value  
 3 relating to [his] defense that he was not present in the shooting vehicle." (Italics added.) As  
 4 already noted, [Petitioner] continues to rely on these arguments on appeal.

5 Because the evidence of Mills's extrajudicial statements was hearsay, as Heard has  
 6 acknowledged, and Heard's manifest primary interest in presenting that evidence to the jury  
 7 was to exculpate himself rather than inculpate Mills, the declarant party, we conclude the  
 8 hearsay exception for a statement of a party set forth in Evidence Code section 1220 did not  
 9 apply, and thus the court properly excluded that evidence.

10 [Petitioner's] contention that the court's exclusion of the proffered evidence of Mills's  
 11 statements deprived him of his constitutional right to present a complete defense is unavailing.  
 12 "Whether rooted directly in the Due Process Clause of the Fourteenth Amendment [citation],  
 13 or in the Compulsory Process or Confrontation clauses of the Sixth Amendment [citations],  
 14 the Constitution guarantees criminal defendants 'a meaningful opportunity to present a  
 15 complete defense.'" (*Crane v. Kennedy* (1986) 476 U.S. 683, 690.) However, "[a]  
 16 defendant's right to present relevant evidence is not unlimited.... [Citations.] A defendant's  
 17 interest in presenting such evidence may thus "'bow to accommodate other legitimate  
 18 interests in the criminal trial process.'" (*U.S. v. Scheffler* (1998) 523 U.S. 303, 308, fn.  
 19 Omitted.) One such interest is adherence to the rules of evidence. (*Taylor v. Illinois* (1988)  
 20 484 U.S. 400, 410; *People v. Gonzales* (1994) 22 Cal.App.4th 1744, 1756.) The rule  
 21 governing the admissibility of a statement of a party, as codified in Evidence Code section  
 22 1220, is one such standard rule of evidence. (Lodgment 1 at 10-12).

23       d.     *Analysis*

24       In ruling the trial court properly deemed the statements inadmissible hearsay, the Court of  
 25 Appeal concluded the evidence was properly excluded primarily relying on California law.  
 26 (Lodgment 1 at 10-12.) The record supports this finding. The Court of Appeal engaged in an  
 27 Evidence Code § 1220 analysis and determined the rule excepts hearsay only when it is being  
 28 offered against the declarant because of the inherent reliability of such statements. (*Id.*) Therefore,  
 to the extent Petitioner seeks a federal court determination that exclusion of Mills's pretrial  
 statements was improper pursuant to California law, his request fails under *Estelle v. McGuire*.

29       Furthermore, the Court of Appeal's decision the trial court properly ruled Heard's statement  
 30 was inadmissible hearsay was neither contrary to nor an unreasonable application of clearly  
 31 established federal law. First, with regard to Plaintiff's due process claim, the Court of Appeal's  
 32 decision was neither arbitrary nor prejudicial so as to allege a due process violation. *See Walters*, 45  
 33 F.3d at 1357. The Court of Appeal engaged in a detailed evidentiary analysis of Evidence Code §  
 34 1220. Specifically, the Court of Appeal determined the trial court did not err in excluding the  
 35 hearsay evidence of Mills's extrajudicial statements because Petitioner did not offer that evidence  
 36 against Mills, as required by Evidence Code § 1220. Thus, their ruling cannot be deemed arbitrary.

1 (Lodgment 1 at 10-12.)

2 Moreover, the record reflects a finding that substantial admissible evidence supported  
 3 Petitioner's conviction of attempted murder. Several witnesses, including Petitioner, place him in  
 4 the vehicle used in the murder attempt on the night of the crime. (Lodgment 1 at 4.) A witness told  
 5 investigators Petitioner's picture in a six-pack lineup "looked like [the gunman] from afar." (*Id.* at  
 6 7.) Another witness testified Petitioner was bragging about committing the murder of a blood gang  
 7 member on the night of the crime. (*Id.* at 5.) Petitioner was later arrested with a pistol that was  
 8 determined to be the source of bullets recovered from the scene of the shooting. (*Id.* at 7.) In light  
 9 of the substantial inculpatory evidence independent of the hearsay statement placing Petitioner in the  
 10 murder vehicle, the Court of Appeal's ruling cannot be construed as "so prejudicial that it rendered  
 11 the trial fundamentally unfair." *Walters*, 45 F.3d at 1357; *Jammal* 926 F.2d at 919. Because the  
 12 Court of Appeal's ruling was neither arbitrary nor prejudicial, Petitioner has failed to demonstrate a  
 13 due process violation. *Fetterly*, 997 F.2d at 1300.

14 Second, the Court of Appeal's determination that Mills's statement was properly withheld  
 15 did not impede Petitioner's Sixth Amendment right to a fair trial. According to *Chambers*,  
 16 Petitioner's alleged Sixth Amendment violation could rest either on a determination that Mills's  
 17 statements were reliable, but withheld, or that evidentiary rules were applied arbitrarily. 401 U.S. at  
 18 302; *See also Rock*, 483 U.S. at 55-56. The Court of Appeal reasoned that Mills's pretrial  
 19 statements were unreliable because they were not offered for the purpose intended by the particular  
 20 hearsay exception. (Lodgment 1 at 10-12). This decision was neither contrary to federal law, nor an  
 21 unreasonable determination based on the facts. *Chambers*, 401 U.S. at 302.

22 Furthermore, in *Rock* the court noted "[i]n applying its evidentiary rules, a State must  
 23 evaluate whether the interests served by a rule justify the limitation imposed on the defendant's  
 24 constitutional right to testify." *Rock* 483 U.S. at 56. Here, as the Court of Appeal noted, the  
 25 limitations on Petitioner's right to present a defense are justified by the well-established prohibition  
 26 of hearsay statements. Moreover, unlike the petitioner in *Rock*, the Petitioner here could and did  
 27 present his exculpatory claim by testifying at trial. Thus, Petitioner can only contend Mills's  
 28 statements would have given his testimony more weight. Because the Court of Appeal upheld the

1 courts actions based on a proper reading of the relevant hearsay exception, and because the withheld  
2 evidence was presented to the jury by Petitioner himself, their decision was not contrary to federal  
3 law and it was a reasonable decision based on the facts. *See Rock* 483 U.S. at 56.

4 For the foregoing reasons, the Court of Appeal's decision that Petitioner's right to present a  
5 complete defense was not offended is not contrary to federal law and it was a reasonable decision  
6 based on the facts. Accordingly, Petitioner's claim that his Constitutional right to a fair trial was  
7 violated by excluding his co-defendant's pretrial statements is **DENIED**.

## VI. CONCLUSION

9 After thorough review of the record in this matter and based on the foregoing analysis, this  
10 Court ORDERS the Petition for Writ of Habeas Corpus be **DENIED**.

## IT IS SO ORDERED.

DATED: June 27, 2011

  
Louisa S. Porter

cc: all parties